

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) ZHN, LLC,

Plaintiff,

v.

Case No. CIV-12-1289-M

(1) RANDY MILLER, LLC,
(2) RANDY L. MILLER,
(3) LIPPARD AUCTIONEERS, INC.,
(4) TROY LIPPARD,
(5) ANGIE LIPPARD;
(6) BRADY LIPPARD,
(7) JERRY WHITNEY, and
(8) UNITED COUNTRY REAL ESTATE,
INC. d/b/a UNITED COUNTRY
AUCTION SERVICES AND UNITED
COUNTRY REAL ESTATE
SERVICES,

Defendants.

(1) RANDY MILLER, LLC,
(2) RANDY L. MILLER, and
(3) LIPPARD AUCTIONEERS, INC.,

Third Party Plaintiffs,

v.

(1) ALEXANDER MAGID
a/k/a ALEX MAGID,

Third Party Defendant.

**REPLY TO THE LIPPARD DEFENDANTS RESPONSE TO THE
THIRD-PARTY DEFENDANT ALEXANDER MAGID
a/k/a ALEX MAGID'S MOTION TO DEFER
COMPLIANCE WITH THE AMENDED SCHEDULING ORDER**

Alexander Magid in Reply to Lippard's Response [Doc. 277] to his Motion to Defer Compliance with the Amended Scheduling Order [Doc. 276] states:

1. The Court entered its Order [Doc. 173] on December 24, 2014, permitting the Miller Defendants leave to amend and add Alexander Magid, as a necessary party to this litigation by January 5, 2015. On January 5, 2015, the Third-Party action was filed [Doc. 189].

2. On January 2, 2015, Lippard Auctioneers, Inc., moved the court for leave to file a Third-Party action and add Alexander Magid, as a necessary party [Doc. 184].

ZHN in responding to that motion on January 9, 2015, stated there was neither a legal nor a factual basis to grant the relief requested by Lippard [Doc.184, pg. 6].

ZHN also advised the court that the addition of Mr. Magid as a third-party could trigger another wave of discovery based upon the issues discussed in *Gilbert v. Security Finance Corp. of Oklahoma*, 2006 OK 58; 152 P.3d, 165. (*Id.*)

3. On January 15, 2015, the Court granted the relief sought by Lippard [Doc. 211].

In granting the relief sought, the Court reminded the parties that a summons had to be served with a copy of the complaint and service was to be accomplished within the time permitted by Rule 4(m) (*Id.* pg. 2). The Third-Party Complaint was filed by Lippard on January 20, 2015 [Doc. 227].

4. Mr. Magid not having been served either by Miller or Lippard, voluntarily responded on January 23, 2015, by moving that both the Miller and Lippard Third-Party actions against him be dismissed [Doc. 236].

5. The responses of Miller and the Lippard Third-Party Plaintiffs to the Motion to Dismiss were filed February 6, 2015 (Miller Response [Doc. 268] and Lippard Response [Doc. 267]).

6. Despite Lippard's position there are no new issues, it is apparent there are. The alter ego claim brought forth new allegations, not previously part of the case, that Mr. Magid was allegedly, individually liable for a breach of contract, as the sole member of a purportedly undercapitalized ZHN. That is the only basis of the alter ego claim, which Mr. Magid by his Motion to Dismiss has shown must fail. Under these circumstances, Mr. Magid should not be required to participate in the Final Pretrial Report and he is entitled, if necessary, to prove the capitalization of ZHN, which has never been an issue before the Third-Party actions.

Alexander Magid, thus, respectfully requests that the Motion to Defer Participation in the Final Pretrial Order be granted.

RELIEF REQUESTED

Alexander Magid requests that the Court enter its Order deferring his participation in the Final Pretrial Report Order and Pretrial proceedings, pending the Court's ruling on his Motion to Dismiss Third-Party actions.

Respectfully submitted,

s/ Murray E. Abowitz

Murray E. Abowitz, OBA No. 00117
George W. Dahnke, OBA No. 2131
ABOWITZ, TIMBERLAKE & DAHNKE, P.C.
105 North Hudson, Tenth Floor
Post Office Box 1937
Oklahoma City, Oklahoma 73102
Telephone: (405) 236-4645
Facsimile: (405) 239-2843
Email: mea@abowitzlaw.com
gwd@abowitzlaw.com
mainmail@abowitzlaw.com

-And-

Michael N. Brown, OBA No. 10219
LAW OFFICES OF MICHAEL N. BROWN, PLLC
8112 NW 129th Place
Oklahoma City, OK 73142
Telephone: (405) 205-8733
E-Mail: brownlawfirm@gmail.com

*Attorneys for Third Party Defendant
Alexander Magid*

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2015, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic filing to the following ECF registrants:

Randy J. Long randy@nwoklaw.com
Clint A. Claypole clint@nwoklaw.com

**Attorneys for Defendants, Randy Miller, LLC
and Randy L. Miller, Individually**

Timothy S. Harmon timharmon@holdenlitigation.com
Shawna L. McCalip ShawnaMccalip@HoldenLitigation.com

**Attorneys for Defendants, Lippard Auctioneers, Inc.
Troy Lippard, Angie Lippard, Brady Lippard,
Jerry Whitney and United Country Real Estate, Inc.
d/b/a United Country**

Murray E. Abowitz mea@abowitzlaw.com
George W. Dahnke gwd@abowitzlaw.com
Nicolas D. Grimwood ndg@abowitzlaw.com

Attorneys for the Plaintiff, ZHN, LLC

s/ Murray E. Abowitz
Murray E. Abowitz